

FREDERICK COUNTY ETHICS COMMISSION

FREDERICK COUNTY, MARYLAND

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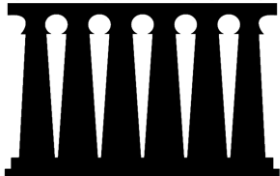
OPINION 12-03

INTRODUCTION

The Ethics Commission recently received a complaint against a County Commissioner based on that Commissioner's participation in two related matters. The first matter was the decision by the Board of County Commissioners to include in its 2012 Legislative Package a request that the State gaming law be amended to include Frederick County on the list of counties in which nonprofit fraternal, religious, and war veterans' organizations could own and operate up to five slot machines. (The law makes the State Comptroller responsible for issuing the licenses.) The second matter was a proposed text amendment to change the County's Zoning Ordinance to remove the restriction on the use of slot machines in the County. The complaint asserted that the County Commissioner should not have voted on these matters because he is a member of nonprofit organizations that could benefit financially if they were allowed to add slot machines for use by members.

According to the information provided, the request to allow certain nonprofit organizations to seek licenses for slot machines came to the Board of County Commissioners by way of petitions signed by numerous members of the AMVETS, Chippewa Club, Eagles Club, Elks Club, Jefferson Patriotic Club, Moose Club, Owls Club, and the VFW. The Commissioner is a member of several organizations identified on the petitions. The Commissioner has listed his membership in these organizations on the Board of County Commissioners' website and has publicly disclosed his memberships in these organizations prior to at least one of the public sessions on the text amendment. The Commissioner further advised the Ethics Commission that he is not an officer for any of the nonprofit organizations to which he belongs, nor does he hold leadership positions with these groups.

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The Commissioner advised the Ethics Commission that he consulted with the County Attorney on compliance with the Ethics Ordinance prior to voting on the text amendment. The Commissioner also queried the other Commissioners at one of the public sessions about their own memberships in organizations that could benefit from the change to the law. Three of the Commissioners indicated that they were also members of nonprofit organizations that could be affected. (The fifth Commissioner was not present at the time, so it is unclear whether he is a member of any nonprofit organization that could be eligible for a slot machine license.) Had the four Commissioners recused themselves from participating, the Board would have lacked a quorum and could not have acted on the proposals.

Discussion

The relevant provisions of the County's Ethics Ordinance are as follows:

§1-7.1-5. CONFLICTS OF INTEREST.

* * *

(C) *Participation prohibitions.* Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(a) A business entity¹ in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(b) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner or employee;

(c) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

¹ Nonprofit organizations are considered business entities under the Ethics Ordinance.

(d) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(e) An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(f) A business entity that:

(i) The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value and

(ii) As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(3) A person who is disqualified from participating under subparagraphs (1) or (2) of this paragraph shall disclose the nature and circumstances of the conflict and may participate or act if:

(a) The disqualification leaves a body with less than a quorum capable of acting;

(b) The disqualified official or employee is required by law to act;
or

(c) The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of subparagraphs (1) and (2) of this paragraph do not apply if participation is allowed by regulation or opinion of the Commission.

* * *

(G) *Use of prestige of office.*

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This paragraph does not prohibit the performance of usual and customary constituent services by a County Commissioner without additional compensation.

It does not appear from the facts presented that the Commissioner violated either Section 1-7.1-5(C)(1) or (C)(2). Even had there been a conflict of interest under subsection (C)(1) or (C)(2), however, the Ethics Commission finds that the Commissioner's participation would have been allowed under subsection (C)(3), which specifically allows an official who would otherwise be disqualified to participate in a matter when the conflict is disclosed and disqualification would leave the body without a quorum capable of acting. It is significant here that the Commissioner who was the subject of the complaint is not the only Commissioner with connections to nonprofit organizations. As noted above, a majority of the members of the Board of County Commissioners belong to at least one nonprofit organization that could potentially benefit from the proposed legislation. If these Commissioners were all disqualified from voting on this issue, the Board would have lacked a quorum and no action could have been taken.

It also does not appear that the Commissioner violated Section 1-7.1-5(G), which makes it a conflict of interest for an official to intentionally use the prestige of his office for the private gain of himself or another. The Ethics Ordinance expressly exempts from this ban the performance of "usual and customary constituent services by a County Commissioner without additional compensation." The Ethics Commission finds that the proposed text amendment and recommendation for a change to the State gaming law were introduced by the Board of County Commissioners in response to petitions submitted by members of nonprofit organizations in the County seeking these changes. This falls squarely within the exemption provided in subsection (G)(2) of the Ordinance.

After filing the initial complaint, the complainant also questioned whether the Ethics Ordinance had been violated because the lobbyist hired by the Board of County Commissioners to assist the Board in its efforts to advance its interests with the State Legislature may also represent a business that manufactures slot machines. The Ethics Commission does not believe that this fact, if true, would cause the County Commissioner to be in violation of the Ethics Ordinance.

Conclusion

Based on its review of the facts and for the reasons stated above, the Ethics Commission concludes that there was no violation of the Ethics Ordinance by the County Commissioner.

The Ethics Commission thanks the complainant for bringing this matter to its attention and also thanks the County Commissioner for his cooperation with the Commission in its inquiry.

April 30, 2012

Date

/s/

Karl W. Bickel, Chairman

/s/

Paula C. Bell, Member

/s/

Hayden B. Duke, Member

/s/

E. Donald Foster, Alternate Member